

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Broan NuTone LLC,
Plaintiff,

v.

Travelers Property Casualty Corp., a
Connecticut corporation, and The Travelers
Indemnity Company of Illinois, an Illinois
corporation,
Defendants.

Case No.: 02-CV-4627

FILED OCT 22 2002

**PLAINTIFF BROAN NUTONE LLC'S SUPPLEMENTAL BRIEF AND NOTICE OF
TENNESSEE ORDER DENYING DEFENDANT TRAVELERS' MOTION TO DISMISS
AND ALTERNATIVE MOTION TO TRANSFER VENUE AND CONSOLIDATE**

COMES NOW, Plaintiff Broan NuTone, LLC, by and through its counsel, Jack Hall, Esq., and Eckert Seamans Cherin & Mellott, LLC., and files the within Plaintiff Broan Nutone LLC's Supplemental Brief And Notice Of Tennessee Order Denying Defendant Travelers' Motion To Dismiss And Alternative Motion To Transfer Venue And Consolidate:

Presently pending before this Honorable Court is Travelers Property Casualty Corporation's motion to dismiss or alternatively transfer, which seeks to have the instant case dismissed or, alternatively, transferred to the United States District Court for the Eastern District of Wisconsin.

Travelers has filed comparable motions in each of the pending actions commenced by Broan in the various states. One of Travelers' arguments, which is forcefully disputed by Broan, is that the matters raised here would most efficiently and most fairly be resolved by transferring the case away from Pennsylvania, the site of the fire and the locale of the vast majority of witnesses, to try all of Travelers claims together in Wisconsin.

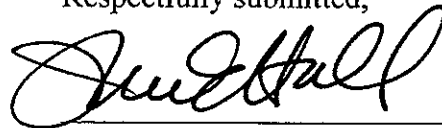
By Order dated October 8, 2002, the Honorable Jon Phipps McCalla of the United States District Court for the Western District of Tennessee, rejected Travelers' position, and denied

Travelers Motion seeking dismissal or transfer of the action commenced by Broan. *See* "Exhibit A," hereto. Said Order was entered on the docket October 9, 2002.

While not binding on this Court, the Order makes clear that Travelers will not now be able to consolidate all of the pending actions in a single court lacking any substantial connection with the underlying events. Broan respectfully submits that this Court should follow the lead of the Tennessee Court, for the reasons set forth in Broan's Brief in Opposition to Travelers' Motion to Dismiss or, Alternatively, Transfer.

For the foregoing reasons, Plaintiff Broan NuTone, LLC, respectfully requests that Travelers' pending motion be denied, and that this matter be allowed to proceed. Alternatively, Broan requests that this Court withhold its determination of whether to transfer the case pending resolution by the Federal Court for the Eastern District of Wisconsin of whether to sever and transfer the action commenced by Travelers before that Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John E. Hall", is written over a horizontal line.

John E. Hall, Esquire

Pa. I.D. No. 11095

Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566-6000

Attorney for Plaintiff Broan NuTone LLC

OCT 14 2002 15:46 FR RBDNR MILW #5

414 298 8097 TO 2#800#1717237601 P.04/05

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE

02 OCT -9 AM 7:02

BROAN NUTONE, LLC
Plaintiff,
vs.
MEMPHIS CONVENTION & VISITORS
BUREAU, TRAVELERS PROPERTY
CASUALTY CORPORATION, TRAVELERS
INDEMNITY COMPANY OF ILLINOIS
AND JOHN DOE CORP.
Defendants.

Civil Action No.: 02-2621 GA

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MOTION DENIED

Jon P. McCalla
JON PHIPPS McALLA
U.S. DISTRICT JUDGE
Oct. 8, 2002
DATE

September 3, 2002

MOTION TO DISMISS AND ALTERNATIVE
MOTION TO TRANSFER VENUE AND CONSOLIDATE

Pursuant to Tennessee Rule of Civil Procedure 12.02, the defendants, Memphis Convention & Visitors Bureau, Travelers Property Casualty Corporation, The Travelers Indemnity Company of Illinois, and John Doe Corp. ("Travelers"), herein move to dismiss the above-referenced matter on the ground the plaintiff has failed to state a claim upon which relief may be granted. In the alternative, the defendants move to transfer venue pursuant to 28 U.S.C. § 1404(a) to the United States District Court for the Eastern District of Wisconsin to consolidate this case with Civil Action No. 02-C-0765, an action currently pending in that jurisdiction in which Travelers Property Casualty Corporation has, as a plaintiff, properly put before that Court the issues which Broan-NuTone, LLC ("Broan"), seeks to resolve through this procedurally improper declaratory judgment action.

The defendants have provided the attached Memorandum of Law in support of their

KPM/305925.1

This document entered on the docket sheet in compliance
with Rule 58 and/or 78(a) FRCP on 10/9/02

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EXHIBIT

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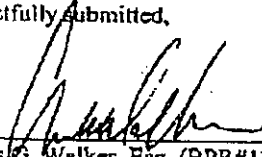
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Motion.

WHEREFORE, the defendants respectfully request that this Court grant their Motion to Dismiss or, in the alternative, to Transfer Venue and Consolidate.

Dated: September 3, 2002

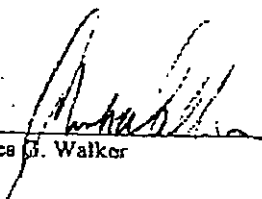
Respectfully submitted,


Charles G. Walker, Esq. (BPR#12338)
Walker Law Office
6750 Poplar Ave., Ste. 412
Memphis, TN 38138
Phone: (901) 756-3084
Fax: (901) 756-3171

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document has been sent via regular first-class mail, postage prepaid, on this 3rd day of September, 2002, to:

Edward M. Bearman, Esq.
Branson and Bearman
780 Ridge Lake Boulevard, Ste. 202
Memphis, Tennessee 38120


Charles G. Walker

KPP#305025.1

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Plaintiff Broan Nutone LLC's Supplemental Brief And Notice Of Tennessee Order Denying Defendant Travelers' Motion To Dismiss And Alternative Motion To Transfer Venue And Consolidate** has been served upon all parties, or their counsel of record, this 21 day of Oct, as follows:

Patrick J. Moran, Esq.
Francis R. Gartner & Associates
960-B Harvest Drive, Suite 210
Blue Bell, PA 19422-1969

☐ Via Prepaid First Class United States Mail
☒ Via Overnight Courier Delivery
☐ Via Facsimile Transmission:
☐ Via Hand Delivery
☐ Via Email:



John E. Hall, Esquire